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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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In the Matter of Sprint Communications  
Company L.P.'s Petition for Authority to  
Provide Local Exchange Service in  
Certain Rural Areas Served by  
Brookings Municipal Utilities d/b/a  
Swiftel Communications

Docket No. TC06-178

**MOTION TO COMPEL RESPONSES AND PRODUCTION OF  
DOCUMENTS ADDRESSED TO SPRINT COMMUNICATIONS, L.P. AS  
PROPOUNDED BY BROOKINGS MUNICIPAL UTILITIES D/B/A  
SWIFTEL COMMUNICATIONS**

Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) by its attorneys, hereby moves for an order, pursuant to SDCL 15-6-37(a), compelling Sprint Communications Company L.P. (Sprint) to provide substantive, non-evasive responses to discovery requests 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 26 and to produce the documents requested in Requests for Production of Documents 1, 3, 4, 5 and 7 contained in the Discovery Requests of Brookings Municipal Utilities d/b/a Swiftel Communications to Sprint dated April 18, 2007 and April 21, 2008. Because the information sought in these discovery requests and requests for production of documents is relevant and discoverable, Sprint's objections should be overruled and Sprint should be directed to provide meaningful answers and to produce documents responsive to the subject discovery and document requests.

In addition, Swiftel asks the Commission to compel Sprint to provide its answers under oath. SDCL Section 15-6-33(a) states that:

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable.

Sprint has not provided the required oath supporting its responses and, therefore, Sprint is not in compliance with this requirement.

Swiftel's specific arguments in connection with each discovery request and document production request are detailed below. The discovery request and document production request, along with Sprint's objections and response, are provided before Swiftel's argument in connection with each such objection and response.

#### **DISCOVERY REQUESTS (DR) 2, 3, and 4**

**Request No. 2:** At page 3 of Sprint's Petition, Sprint state that Sprint and MCC telephone of the Midwest, Inc., (MCC) have entered into a contract to provide facilities-based competitive local and long distance voice service. Indentify the contract Sprint and MCC have entered into to provide service within the area served by Swiftel

**Response:** Sprint objects to the request on the grounds that it is not likely to lead to the discovery of admissible evidence, and is unduly burdensome. This request is directed to the nature of Sprint/MCC business model, which is not relevant to Sprint's CLEC certification. The validity of the Sprint/cable company business model has been upheld by every federal court to have considered it, as well as the FCC. Re-litigating the validity

of the business model is unreasonable and unduly burdensome. Furthermore, the business model is currently operating in South Dakota serving subscribers in the Qwest Territory. The business model that will be used in Swiftel territory is no different than the model already deployed in Qwest territory. Following is a list of federal court and FCC dockets in which the business model has been approved:

FCC – WC Docket No. 06-55

Southern District of Iowa – Docket Nos. 4:06 cv 00291 and 4:06 cv 00376

District of Nebraska – Docket No. 4:05 cv 3260

Southern District of Illinois – Docket No. 3:06 cv 00073

Western District of New York – Docket No. 6:05 cv 06502

Western District of Texas – Docket Nos. 1:06 cv 00065 and 1:06 cv 00825

**Request No. 3:** For the contract identified in Discovery Request 2, state the term of the contract.

**Response:** See Request No. 2

**Request No 4.** For the contract identified in Discovery Request 2, identify the circumstances under which either Sprint or MCC can terminate the contract.

**Response:** See Request No. 2

## **ARGUMENT**

The responses to these questions will provide evidence in connection with Sprint's representations in its Petition for Authority (Petition) concerning its contract with MCC Telephony of the Midwest, Inc. (MCC) and whether Sprint meets the

requirements for its Petition to be granted. It is Sprint that relies on its agreement with MCC to support its Petition and, therefore, Sprint's objections as to relevance must be rejected. For example, at page 3 of the Petition, Sprint states that Sprint and MCC "have entered into a contract to provide facilities-based competitive local and long distance voice service within several markets already receiving cable TV and broadband services from MCC in South Dakota." Further, at pages 6-8, Sprint relies on its agreement with MCC to argue that it meets various eligible telecommunications carrier (ETC) requirements, including 1) the provision of voice grade access to the public switched telephone network; 2) local usage meaning a prescribed amount of minutes of use of local exchange service provided free of charge to end users; 3) dual tone multi-frequency signaling or its functional equivalent; 4) single-party service or its functional equivalent; and 5) toll limitation for qualifying low-income consumers. Sprint also relies on its agreement with MCC to argue that Sprint and MCC meet the requirement to offer services utilizing their own facilities or a combination of their own facilities and resale of other carriers' services. Finally, Sprint relies on MCC's advertisement of services to meet the requirement of 47 C.F.R. Section 54.201(d)(2).

Sprint's arguments that the agreement is not relevant because Sprint's business model has been upheld by federal courts and the FCC and is currently operating in Qwest's South Dakota territory also should be rejected. As an initial matter, the discovery questions posed do not ask about Sprint's business model. Rather, they ask specifically about the contract Sprint references and relies on in its Petition. Sprint's unsupported statement that the business model used in Swiftel's territory is no different than the model used in Qwest territory does not address the facts of the contract.

Sprint's larger claim, that the Commission is precluded or should forego its obligation to make a fact-based decision in this proceeding because of the cited FCC and court cases, must be summarily rejected. Sprint's claim that the FCC has approved its business model is flatly false. In the docket referenced by Sprint, the FCC in no way made any finding about whether Sprint meets this Commission's certification requirements. Similarly, none of the court cases cited by Sprint made any findings or addressed in any way, whether Sprint meets the requirements set out in South Dakota law and the Commission's rules to be certificated in Swiftel's service area.

With respect to Sprint's claims about its service in South Dakota, Swiftel has a statutory right to participate in a proceeding in which a potential competitor requests certification. SDCL§ 49-31-70. Further, SDCL §49-31-69 states that an application for an amended certificate is subject to the same requirements as an application for an initial certificate. Therefore, even if Sprint's business model is operating in Qwest territory, Sprint is required by statute and the Commission's previous order concerning Sprint's certification to prove its qualifications to be certificated in Swiftel's service territory.

Swiftel also notes that this Commission has denied intervention to Swiftel in a certificate of authority proceeding, where the petitioning carrier did not seek to provide service in Swiftel's service territory.<sup>1</sup> This Commission precedent and Sprint's argument would operate to effectively deny Swiftel, and any other rural ILEC, from participating in a certification proceeding once a carrier is granted certification in Qwest's territory. Such a result would effectively gut the rules and protections that apply to rural service territories.

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<sup>1</sup> *In The Matter Of The Application Of Mcc Telephony Of The Midwest, Inc. D/B/A Mediacom For A Certificate Of Authority To Provide Interexchange Telecommunications Services And Local Exchange Services In South Dakota*, TC06-046, Order Denying Intervention, June 21, 2006.

**DR 5 and 6**

**Request No. 5:** Identify and provide a copy of all statements made to financial analysts concerning Sprint's CLEC business other than Sprint's joint provision of service with cable companies, during the years 2005, 2006, and 2007. Identify and provide a copy of all statements made to financial analysts concerning Sprint's joint provision of service with cable companies during the years 2005, 2006, and 2007.

**Response:** Sprint objects to this request on the grounds that it is overly broad and unduly burdensome. Sprint is a publicly traded company with over 56,000 employees operating in all 50 states. It would be impossible to identify all statements requested. Furthermore, Sprint objects to this request on the grounds that it is not likely to lead to the discovery of admissible evidence. The Commission has already found that Sprint has "demonstrated sufficient technical, financial, and managerial capabilities to offer telecommunications services in South Dakota." See Order Granting Amended Certificate of Authority, Docket No. TC96-156. Sprint's financial capability to operate as a CLEC is not in question.

Subject to and without waiving the forgoing objection, Sprint responds as follows: Non-proprietary information about Sprint, including but not limited to financial statements and SEC filings, are available to investors and the general public through the Investor Relations link on Sprint's website.

<http://investors.sprint.com/phoenix.zhtml?c=1272149&p=irol-IRHome>

**Request No. 6:** Identify and provide a copy of all statements made to shareholders concerning Sprint's CLEC business, other than Sprint's joint provision of service with cable companies, during the years 2005, 2006, and 2007. Identify and provide a copy of all statements made to shareholders concerning Sprint's joint provision of service with cable companies during the years 2005, 2006, and 2007.

**Response:** See Request No. 5.

## **ARGUMENT**

The responses to these questions will provide evidence concerning Sprint's commitment to providing competitive local exchange service (CLEC) and service in connection with cable companies described in its Petition and the likelihood that Sprint will continue to provide such service in the future. Swiftel notes that earlier this year Sprint announced financial difficulties. DR 5 and 6 will provide evidence as to whether those financial difficulties have caused Sprint to reassess its commitment to CLEC services and the likelihood that Sprint will seek to terminate its arrangement with MCC.

Sprint objects to the questions as overly broad and burdensome. In support of its objection, Sprint refers to its size and number of employees and implies that the requested statements are numerous. Sprint then refers Swiftel to its website where, allegedly, all non-proprietary information about Sprint is available to the general public. The referral to a website, however, is not responsive to DR 5 and 6, which asks Sprint to identify specific statements made about its CLEC business and the joint provision of service with cable companies. As it is, Sprint seeks to send Swiftel on a futile exercise to review countless documents which may or may not contain the information requested.

If no such statements were made, Sprint should say so. If statements about the CLEC business and joint provision of service with cable companies were made, Sprint should identify them.

**DR 7, 8, and 9**

**Request No. 7:** Provide a list of all equipment and facilities in South Dakota which are owned, leased or controlled by Sprint, including but not limited to switching equipment (Stored Program Control Class 5 and Class 4 switches including remote switches for these switches, Next Generation / Soft Switches including all servers or ancillary gateways, W PBXs, analog PBXs), data routers / switches, and transport equipment (ATM, SONET, MPLS, Frame Relay, IP, and wave division multiplexing) which are available for use to provide facilities-based competitive local and long distance voice service with MCC.

**Response:** Sprint objects to the request on the grounds that it is not likely to lead to the discovery of admissible evidence. The Commission has already found that Sprint has “demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota.” See Order Granting Amended Certificate of Authority, Docket No. TC96-156. All of the equipment and facilities Sprint will use to provide the jointly-provided service in Swiftel territory is the same as the equipment and facilities currently used to provide the jointly-provided service in Qwest territory. There is no question that the jointly-provided service in Qwest territory is operating effectively and that Sprint has sufficient technical, financial, and managerial capabilities to provide the jointly-provided service. Furthermore, as explained in the response to Request No. 2,

the Sprint/cable business model has been repeatedly upheld by federal courts and the FCC.

**Request No. 8:** Provide a list of all equipment and facilities in South Dakota which Sprint intends to use to provide facilities-based competitive local and long distance voice service with MCC, including but not limited to switching equipment (Stored Program Control Class 5 and Class 4 switches including remote switches for these switches, Next Generation / Soft Switches including all servers or ancillary gateways, IP PBXs, analog PBXs), data routers / switches, and transport equipment (ATM, SONET, MPLS, Frame Relay, IP, and wave division multiplexing).

**Response:** See Request No. 7.

**Request No.9:** Provide a list of the locations by street address of all equipment and facilities identified in Discovery Requests 7 and 8. These locations shall include but not be limited to locations of buildings, huts, collocation sites, and electronic equipment cabinets both pad and pole mounted.

**Response:** See Request No. 7.

## **ARGUMENT**

In these questions, Swiftel asks Sprint to identify the equipment and facilities available for use to provide facilities-based competitive local and long distance voice service with MCC. Sprint objects to Swiftel's requests on the grounds that they are not

likely to lead to the discovery of admissible evidence; the Commission has already found Sprint has sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota; the equipment is currently being used to provide service in Qwest territory; and the Sprint business model has been upheld by federal courts and the FCC.

The responses to these questions are relevant to this proceeding to evaluate Sprint's claims in its Petition about the services it will provide and its relationship with MCC. They also will provide evidence necessary to evaluate the impact of Sprint's alleged "partnership" with MCC on the provision of service and, as a result, on consumers of such services. With respect to Sprint's other claims, Swiftel repeats its arguments made in DR 2, 3 and 4.

**DR 10, 11, and 12**

**Request No. 10:** Identify Sprint's annual maintenance budget for the equipment and facilities identified in Discovery Requests 7 and 8 for the years 2006 and 2007 and Sprint's projected maintenance budget for facilities in South Dakota for 2008 and 2009.

**Response:** Sprint objects to the request on the grounds that it is not likely to lead to the discovery of admissible evidence. The Commission has already found that Sprint has "demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota." See Order Granting Amended Certificate of Authority, Docket No. *TC96-156*. All of the equipment and facilities Sprint will use to provide the jointly-provided service in Swiftel territory is the same as the equipment and facilities currently used to provide the jointly-provided service in Qwest territory. There

is no question that the jointly-provided service in Qwest territory is operating effectively and that Sprint has sufficient technical, financial, and managerial capabilities to provide the jointly-provided service, including a sufficient maintenance budget. Furthermore, Sprint is not seeking ETC status and therefore will not collect any federal Universal Service Fund support. Sprint is required to demonstrate satisfaction of the 214(e) criteria solely for the purpose of getting certified to provide service in the rural LEC territories of Swiftel and Interstate. Accordingly, Sprint's maintenance and construction budgets are not relevant.

Subject to and notwithstanding the foregoing objection, Sprint responds as follows:

Financial reports and other general financial information available to the public may be found at the Investor Relations link on Sprint's web site through the URL provided in the Response to Request No. 5.

**Request No. 11:** Identify Sprint's annual maintenance budget for all equipment and facilities in South Dakota for the years 2006 and 2007 and Sprint's projected maintenance budget for all equipment and facilities in South Dakota for 2008 and 2009.

**Response:** See Request No. 10.

**Request No. 12:** Identify Sprint's annual construction budget for facilities in South Dakota for 2006 and 2007 and Sprint's projected construction budget for facilities in South Dakota for 2008 and 2009.

**Response:** See Request No. 10.

## ARGUMENT

In these questions, Swiftel asks Sprint to identify Sprint's annual maintenance and construction budget for facilities in South Dakota and for use to provide facilities-based competitive local and long distance voice service with MCC. Sprint objects to Swiftel's requests on the grounds that they are not likely to lead to the discovery of admissible evidence; the Commission has already found Sprint has sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota; the equipment is currently being used to provide service in Qwest territory; and Sprint is not seeking federal universal service funds.

The responses to these questions are relevant to this proceeding to evaluate Sprint's claims in its Petition about the services it will provide and its relationship with MCC. They also will provide evidence necessary to evaluate the quality of service provided by Sprint and whether such service will be in the public interest. With respect to Sprint's other claims, Swiftel repeats its arguments made in DR 2, 3 and 4. Accordingly, Sprint's objections must be denied.

Further, in response, Sprint refers Swiftel to a website containing financial reports and general financial information. The referral to a website providing general financial information, however, is not responsive to DR 10, 11 and 12, which asks Sprint to identify the maintenance and construction budgets for specific equipment and for South Dakota. If the requested information is contained in the website, at a minimum, Sprint should identify the specific document, date and page where the requested information can be found. As it is, Sprint seeks to send Swiftel on a futile exercise to review countless documents which may or may not contain the information requested.

## **DR 26**

**Request No. 26:** Identify all financial arrangements made with Mediacom and provide a copy of all documents associated with those financial arrangements.

**Response:** Sprint objects to this request on the grounds that it is not likely to lead to the discovery of admissible evidence. Sprint's business arrangements with Mediacom are not relevant to Sprint's CLEC certification. The Sprint/cable business model has been repeatedly upheld by federal courts and the FCC. A detailed list of the federal court and FCC docket numbers was provided in the response to Request No. 2 in the First Set of Data Requests.

## **ARGUMENT**

In this question Swiftel asks Sprint to provide information concerning its financial arrangements with MCC. Sprint objects on the basis that the request is not likely to lead to the discovery of admissible evidence; Sprint's business arrangements with MCC are not relevant to its CLEC certification; and the business model has been upheld by federal courts and the FCC.

The response to this question will provide evidence in connection with Sprint's representations in its Petition concerning its relationship with MCC, the services it provides, and whether it meets the requirements of an eligible telecommunications carrier (ETC). It is Sprint that relies on its relationship with MCC to support its Petition and, therefore, Sprint's objections as to relevance must be rejected. Sprint's other objections also must be rejected as discussed in the Argument for DR 2, 3 and 4.

**REQUEST FOR PRODUCTION OF DOCUMENTS (RPD) 1, 4, and 5**

**RPD 1:** Produce all documents:

- a. That were referenced by you in responding to any Discovery Request
- b. That were identified in any Discovery Request;
- c. That you contend support your responses to the Discovery Requests propounded herein.

**Response:** With respect to DR#2, #5, and #6, Sprint objects to this request on the grounds that it is unduly burdensome. FCC and court decisions referenced in DR #2 are publicly available documents. Documents referenced in #5 and #6 are publicly available through the Sprint web site (URL provided). With respect to the SDPUC order granting Sprint's CLEC authority referenced in DR #5, #7, and #10, that order is attached hereto. With respect to any and all references to Sprint's agreement with Mediacom, Sprint reiterates its objection as set forth in the response to DR#2.

**RPD 4:** Provide a copy of the contract and other documents, including addendums and amendments, with establish and govern the operations and business relationship between Sprint and MCC.

**Response:** See objection set forth in DR #2.

**RPD 5:** Provide all agreements between Sprint including its affiliates and MCC including its affiliates that are required to implement the delivery of services as outlined in its Petition.

**Response:** See objection set forth in DR #2.

## **ARGUMENT**

As an initial matter, Sprint does not object to providing the documents referenced in DR 10, 11, 12 and 26 and, therefore, they should be provided. Sprint objects to providing documents referenced in DR 2, 5 and 6 as burdensome and Sprint further objects to the provision of documents referenced in DR 5 and 6 because it provided a website link from which any documents, allegedly, can be obtain. However, because Sprint refused to identify any of the documents requested in DR 2, 5, and 6, Sprint's position that the production of such documents would be burdensome is unsupported. Further, because the documents were never identified by Sprint, Sprint's referral to a website seeks to send Swiftel on a futile exercise to review countless documents which may or may not contain the information requested.

With respect to Sprint's agreement with MCC (and RFP 2, 4 and 5), Sprint objects to the provision of any contract. In communications with Sprint concerning this Motion, Sprint offered to allow Swiftel to "review" the agreement provided by Sprint in the arbitration docket. Swiftel does not file this Motion simply to seek to require Sprint to reproduce that document. However, Sprint's offer is inadequate and does not satisfy DR 2, RPD 1, RPD 4 or RPD 5. Left unanswered in Sprint's offer is whether the

agreement has any addendums and amendments (RPD 4), whether the agreement has been modified, and whether any other agreements exist (RPD 5). Also, Sprint's offer was not provided under oath as required by SDCL Section 15-6-33(a).

**RPD 3:** Provide a diagram of the facilities identified in Discovery Requests 7 and 8.

**Response:** See objection set forth in DR #7.

## **ARGUMENT**

Sprint objects to providing a diagram of the facilities identified in DR 7 and 8 based on its objections to those discovery requests. The responses to these questions are relevant to this proceeding to evaluate Sprint's claims in its Petition about the services it will provide and its relationship with MCC. They also will provide evidence necessary to evaluate the impact of Sprint's alleged "partnership" with MCC on the provision of service and, as a result, on consumers of such services.

**RPD 7:** Provide a copy of all testimony filed by each individual Sprint intends to call as a witness in this proceeding. Provide a copy of all testimony filed on behalf of Sprint in connection with a request for a certificate of authority or state proceeding requesting authority to operate as a competitive local exchange carrier.

**Response:** Sprint objects to this request on the grounds that it is overly broad and unduly burdensome. In over 20 years at Sprint, Mr. Burt has testified in dozens of proceedings, many of which have nothing to do with the issues in this proceeding. Furthermore, Sprint is or has been a CLEC in most, if not all, states. Subject to and notwithstanding the

foregoing objection, Sprint responds as follows: The following is a list of state commission docket numbers in which Sprint has filed testimony in a certification proceeding in connection with the Sprint/cable business model (response provided by Mary Ellen Hassell).

Illinois 05-0301

Nebraska 0-3204

Wisconsin 6055-NC-I 03

Indiana 42999

Oklahoma PUC-200700054

Pennsylvania A-3 101 83F0002AN1 1)-AIVIK

## **ARGUMENT**

With respect to Swiftel's request for the previous testimony of witnesses, Sprint argues that the request is overly broad and burdensome. Sprint then claims that it has only filed testimony in six certification proceedings in connection with the Sprint/cable business model, none of which were in South Dakota. Sprint provides no support for an argument that the production of testimony in only six proceedings is burdensome and, therefore, Sprint should provide the referenced testimony.

## CONCLUSION

For all of the above reasons, Swiftel requests that the Commission direct Sprint to provide complete, non-evasive substantive responses to discovery requests 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 26 and to produce the documents requested in Requests for Production of Documents 1, 3, 4, 5 and 7 contained in the Discovery Requests of Brookings Municipal Utilities d/b/a Swiftel Communications to Sprint dated April 18, 2007 and April 21, 2008. Swiftel also asks the Commission to compel Sprint to provide its answers under oath as required by SDCL Section 15-6-33(a).

Respectfully submitted,

BROOKINGS MUNICIPAL UTILITIES  
D/B/A/ SWIFTEL COMMUNICATIONS

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June 26, 2008

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 26th day of June, 2008, a copy of the **Motion to Compel Responses and Production of Documents Addressed to Sprint Communications, L.P. as Propounded by Brookings Municipal Utilities D/B/A Swiftel Communications** was served via electronic mail and by U.S. Mail, postage prepaid, to the following:

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